IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant:	Stephen J. Brown		
Application No.:	09/665,442	Examiner:	Koppikar, V.
Filed:	September 19, 2000	Art Group:	3626
For:	MULTI-USER REMOTE HEALTH MONITORING SYSTEM WITH BIOMETRICS SUPPORT		

APPEAL BRIEF

Mail Stop - Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant submits the following Appeal Brief pursuant to 37 C.F.R. §41.37 for consideration by the Board of Patent Appeals and Interferences. Enclosed herewith is the charge $500.00 to cover the cost of (i) filing the opening brief, as required by 37 C.F.R. §41.20(b)(2).

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I. REAL PARTY IN INTEREST

The real parties in interest are Health Hero Network, Inc., the assignee of record and a subsidiary of the Robert Bosch North America, and Abbott Diabetes Care, a subsidiary of Abbott Laboratories, Inc., a licensee of the application.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellant, Appellant's legal representative, or Assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 47-49, 51-62 and 77-110 are pending and remain rejected. Claims 1-46, 50 and 63-76 were previously cancelled. The Appellant hereby appeals the rejections of claims 47-49, 51-62 and 77-110.

IV. STATUS OF AMENDMENTS

Appellant is appealing a final Office Action issued by the Examiner on August 9, 2007. On December 5, 2007, Appellant filed a Pre-Appeal Brief Request For Review. On January 10, 2008, the Office issued a Notice of Panel Decision from the Pre-Appeal Brief Review indicating that the case will proceed to the Board of Patent Appeals and Interferences.

V. SUMMARY OF CLAIMED SUBJECT MATTER

(1) In a first embodiment, represented by independent claim 47, the presently claimed invention provides a system 16 for monitoring a physiological condition of an individual using a computer network (FIG. 1). The system generally comprises a central processing unit (server) 18, a remote processing apparatus (remote apparatus) 26 and a workstation 20. An overview of the system 16 may be found in the specification on page 9, line 1 through page 10, line 8 as illustrated in FIGS. 1 and 2.

The central processing unit 18 (A) has access to one or more databases 38 and (B) is configured to perform operations according to monitoring application programming 48. The central processing unit 18 comprises (i) programming code (script generator) 50 configured to generate a script program 40 that collects measurement data 44 relating to the physiological condition of the individual and (ii) further programming code (script assignor) 52 configured to assign the script program 40 to the individual. The central processing unit 18 may communicated with the workstation 20 and at least one remote processing apparatus 26 across a communication network 24, see page 4, line 32 through page 5, lines 7. The database 38 stores at least (i) the script programs 40 prior to transmission to the remote processing apparatus 26, (ii) responses 42 from the individuals using the remote processing apparatus 26, (iii) the measurements 44 collected by the remote processing apparatus 26 and (iv) a look-up table 46, see page10, lines 2-6. The monitoring application program 48 is a controlling software application executed by central processing unit 18 to perform the various functions, see page 13, line 27 through page 14, line 2. The programming code 50 generates script programs 40 from script information entered through the workstation 20,

see page 13, line 30 through page 14, line 2. The scrip program 40 generally provides a set of commands to the remote processing apparatus 26 that instruct (i) which queries to pose to the individual, (ii) what are the possible answers, (iii) what measurements to make and (iv) when to reconnect with the central processing unit 18, see example script commands in table 1 on page 15 and an example script program 40 in FIGS. 6A-6B. The measurement data 44 is the data generated by sensors 28, 71, 79 in and/or connected to the remote processing apparatus 26, see page 5, line 29 through page 6, line 3. The further programming code 52 assigns the script programs 40 to the patients, see page 16, lines 23-26.

The remote processing apparatus 26 (i) is connectable to a measuring device (monitoring device) 28 to receive the measurement data 44 according to a collect command contained in the script program 40 and (ii) connectable to the central processing unit 18 to transmit the measurement data 44 to the central processing unit 18 according to a transmit command contained in the script program 40. The remote processing apparatus 26 generally provides a man-machine interface to the individual, see page 5, lines 13-27. The measuring device 28 measures a physiological condition of the individual and transfers the measurements to the remote processing apparatus 26, see page 5, lines 29-32. The collect command instructs the remote processing apparatus 26 to collect the measurement data 44 from the measuring device 28, see page 15, Table 1. The transmit command instructs the remote processing apparatus 26 to connect to the central processing unit 18 and transmit various types for information gathered by the remote processing apparatus 26 to the central processing unit 18, see page 15, Table 1, CONNECT command.

The workstation 20 is connectable to the central processing unit 18 to receive the measurement data 44 so that a health care provider may review a report (FIG. 10) generated based on the measurement data 44. The workstation 20 generally allows a healthcare provider to enter and receive information related to the care of the individuals using the remote processing apparatus 26, see page 5, lines 7-11. An example entry scenario is illustrated in FIG. 5 and described on page 14 lines 3-24. An example report scenario is illustrated in FIG. 10 and described on page 17, lines 4-10.

(2) In a second embodiment, represented by independent claim 59, the presently claimed invention provides a system 16 for monitoring a physiological condition of an individual using a computer network (FIG. 1). The system 16 generally comprises a central processing unit (server) 18, a remote processing apparatus (remote apparatus) 26 and a workstation 20. An overview of the system 16 may be found in the specification on page 9, line 1 through page 10, line 8 as illustrated in FIGS. 1 and 2.

The central processing unit 18 (A) has access to one or more databases 38 and (B) is configured to perform operations according to monitoring application programming 48. The central processing unit 18 comprising (i) programming code (script generator) 50 configured to generate a script program 40 that collects blood glucose data (measurements) 44 relating to the physiological condition of the individual and (ii) further programming code (script assignor) 52 configured to assign the script program 40 to the individual. The central processing unit 18 may communicated with the workstation 20 and at least one remote processing apparatus 26 across a communication network 24, see page 4, line 32 through page 5, lines 7. The database 38 stores at least (i) the script programs 40 prior to transmission to the remote processing apparatus 26, (ii)

responses 42 from the individuals using the remote processing apparatus 26, (iii) the measurements 44 collected by the remote processing apparatus 26 and (iv) a look-up table 46, see page10, lines 2-6. The monitoring application program 48 is a controlling software application executed by central processing unit 18 to perform the various functions, see page 13, line 27 through page 14, line 2. The programming code 50 generates script programs 40 from script information entered through the workstation 20, see page 13, line 30 through page 14, line 2. The scrip program 40 generally provides a set of commands to the remote processing apparatus 26 that instruct (i) which queries to pose to the individual, (ii) what are the possible answers, (iii) what measurements to make and (iv) when to reconnect with the central processing unit 18, see example script commands in table 1 on page 15 and an example script program 40 in FIGS. 6A-6B. The measurement data 44 is the data generated by sensors 28, 71, 79 in and/or connected to the remote processing apparatus 26, see page 5, line 29 through page 6, line 3. The further programming code 52 assigns the script programs 40 to the patients, see page 16, lines 23-26.

The remote processing apparatus 26 is (i) connectable to a measuring device (monitoring device) 28 and to receive the blood glucose data 44 according to a collect command in the script program 40 and (ii) connectable to the central processing unit. 18. The remote processing apparatus 26 generally provides a man-machine interface to the individual, see page 5, lines 13-27. The measuring device 28 measures a blood glucose of the individual and transfers the measurements to the remote processing apparatus 26, see page 5, lines 29-32. The collect command instructs the remote processing apparatus 26 to collect the measurement data 44 from the measuring device 28, see page 15, Table 1. The transmit command instructs the remote processing apparatus 26 to connect

to the central processing unit 18 and transmit various types for information gathered by the remote processing apparatus 26 to the central processing unit 18, see page 15, Table 1, CONNECT command. An example measurement of blood glucose may be found on page 13, lines 24-25.

The workstation 20 is connectable to the central processing unit 18 to receive the blood glucose data 44 so that a health care provider may review a report (FIG. 10) generated based on the blood glucose data 44. The workstation 20 generally allows a healthcare provider to enter and receive information related to the care of the individuals using the remote processing apparatus 26, see page 5, lines 7-11. An example entry scenario is illustrated in FIG. 5 and described on page 14 lines 3-24. An example report scenario is illustrated in FIG. 10 and described on page 17, lines 4-10.

(3) In a third embodiment, represented by independent claim 77, the presently claimed invention provides a method (FIGS. 11A-14B) of monitoring a physiological condition of an individual using a computer network (FIG. 1). The computer network comprises a central processing unit (server) 18 and a remote processing apparatus (remote apparatus) 26. The central processing unit 18 has a script program 40 stored therein and the remote processing apparatus 26 communicating with a measuring device 28 that measures at least one parameter (measurements) 44 indicative of the physiological condition of the individual, An overview of the computer network may be found in the specification on page 9, line 1 through page 10, line 8 as illustrated in FIGS. 1 and 2.

The method generally comprises (A) storing 208 a script assignment 57 that associates the script program 40 with the individual, (B) connecting 210 (YES branch) the central processing unit 18 with the remote processing apparatus 26, (C) transferring 219 the script program

40 from the central processing unit 18 to the remote processing apparatus 26, (D) executing 308-318 the script program 40 in the remote processing apparatus 26 to collect measurement data 44 from the measuring device 28 and (E) transmitting 330 the measurement data 44 from the remote processing apparatus 26 to the central processing unit 18 upon execution of a transmit command (CONNECT command in Table 1) of the script program 40. The script assignment generation and storage allows the script programs 40 to be customized to a particular individual (e.g., Jane Doe) and/or a type of individuals (e.g., all diabetic patients), see page 16, line 28 through page 17, line 2 and FIG. 7. Connection between the central processing unit 18 and the remote processing apparatus 26 may be initiated by the remote processing apparatus 26, see page 14, lines 12-15. Execution of a script program 40 enables the remote processing apparatus 26 to interact with the individual and/or measuring device 28 in a variety of ways, see page 21, line 25 through page 22, line 15. Once the script program 40 has gathered the requested data and responses, the remote processing apparatus 26 transmits device measurements 44, query responses 42, scrip identification code and a patient or patient type identification code to the central processing unit 18, see page 22, lines 27-34.

(4) In a fourth embodiment, represented by independent claim 84, the presently claimed invention provides a method (FIGS. 11A-14B) of monitoring a physiological condition of an individual using a computer network (FIG. 1). The computer network comprising a central processing unit (server) 18 and a remote processing apparatus (remote apparatus) 26. The central processing unit 18 has a script program 40 stored therein and the remote processing apparatus 26 communicates with a measuring device 28 that measures at least one parameter (measurements) 44 indicative of the physiological condition of the individual.

The method generally comprises (A) transmitting 219 the script program through a communication link (via communication network) 24 from the central processing unit 18 to the remote processing apparatus 26, (B) disconnecting 334 the communication link 24 after the script. program has been transmitted, (C) collecting 318 measurement data 44 in the remote processing apparatus 26 as received from the measuring device 28 according to a collect command of the script program 40, (D) connecting 328 the communication link between the remote processing apparatus 26 and the central processing unit 18 after the measurement data 44 has been collected and (E) transmitting 330 the measurement data 44 from the remote processing apparatus 26 to the central processing unit 18 through the communications link 24. A script program 40 may be transmitted from the central processing unit 18 to the remote processing apparatus 26 when a connection is established between the central processing unit 18 and the remote processing apparatus 26, see page 18 lines 13-16 and page 19 lines 24-27. Once the script program 40 has been transferred, the central processing unit 18 will inform the remote processing apparatus 26. Thereafter, the communication link 24 will be disconnected and a script interpreter within the remote processing apparatus 26 will be restarted, see page 15, Table 1, CONNECT command. The measuring device 28 measures data of the individual and transfers the measurements 44 to the remote processing apparatus 26, see page 5, lines 29-32. The collect command instructs the remote processing apparatus 26 to collect the measurement data 44 from the measuring device 28, see page 15, Table 1. Thereafter, the remote processing apparatus 26 may establish a subsequent communication link to the central processing unit 18, see page 22, lines 27-30. After the communication link has been established, the remote processing apparatus 26 transmits device measurements 44, query responses 42, scrip identification

code and a patient or patient type identification code to the central processing unit 18, see page 22, lines 27-34.

(5) In a fifth embodiment, represented by independent claim 91, the presently claimed invention provides one or more processor readable storage devices having processor readable code (monitoring application 48 and script programs 40) and embodied thereon, the processor readable code 48 and 40 being configured to program one or more processors (server 18 and remote apparatus 26) to perform a method (FIGS. 11A-14B) of monitoring a physiological condition of an individual using a computer network (FIG. 1). The computer network comprising a central processing unit (server) 18 and a remote processing apparatus (remote apparatus) 26. The central processing unit 18 has access to a script program 40 stored therein and the remote processing apparatus 26 communicates with a measuring device (monitoring device) 28 that measures at least one parameter (measurements) 44 indicative of the physiological condition of the individual.

The method generally comprises the steps of (A) storing 208 a script assignment 57 that associates the script program 40 with the individual, (B) connecting 210 (YES branch) the central processing unit 18 with the remote processing apparatus 26, (C) transmitting 219 the script program 40 from the central processing unit 18 to the remote processing apparatus, (D) executing 308-318 the script program 40 in the remote processing apparatus 26 to collect measurement data 44 from the measuring device 28 and (E) transmitting 330 the measurement data 44 from the remote processing apparatus 26 to the central processing unit 18 upon execution of a transmit command of the script program 40. The script assignment generation and storage allows the script programs 40 to be customized to a particular individual (e.g., Jane Doe) and/or a type of individuals (e.g., all

diabetic patients), see page 16 line 28 through page 17, line 2 and FIG. 7. Connection between the central processing unit 18 and the remote processing apparatus 26 may be initiated by the remote processing apparatus 26, see page 14, lines 12-15. Execution of a script program 40 enables the remote processing apparatus 26 to interact with the individual and/or measuring device 28 in a variety of ways, see page 21, line 25 through page 22, line 15. Once the script program 40 has gathered the requested data and responses, the remote processing apparatus 26 transmits device measurements 44, query responses 42, scrip identification code and a patient or patient type identification code to the central processing unit 18, see page 22, lines 27-34.

(6) In a sixth embodiment, represented by independent claim 98, the presently claimed invention provides one or more processor readable storage devices having processor readable code (monitoring application 48 and script programs 40) embodied thereon, the processor readable code configured to program one or more processors (server 18 and remote apparatus 26) to perform a method (FIGS. 11A-14B) of monitoring a physiological condition of an individual using a computer network (FIG. 1). The computer network comprising a central processing unit (server) 18 and a remote processing apparatus (remote apparatus) 26. The central processing unit 18 has access to a script program 40 stored in the processor readable storage devices (database) 38 and the remote processing apparatus 26 communicates with a measuring device (monitoring device) 28 that measures at least one parameter (measurements) 44 indicative of the physiological condition of the individual.

The method generally comprises the steps of (A) transmitting 219 the script program through a communication link (via communication network) 24 from the central processing unit 18

to the remote processing apparatus 26, (B) disconnecting 334 the communication link 24 after the scrip program 40 has been transmitted, (C) collecting 318 measurement data 44 at the remote processing apparatus 26 from the measuring device 28 according to a collect command of the script program 40, (D) connecting 328 the communication link 24 between the remote processing apparatus 26 and the central processing unit 18 after the measurement data 44 has been collected and (E) transmitting 330 the measurement data 44 from the remote processing apparatus 26 to the central processing unit 18 through the communication link 24. A script program 40 may be transmitted from the central processing unit 18 to the remote processing apparatus 26 when a connection is established between the central processing unit 18 and the remote processing apparatus 26, see page 18, lines 13-16 and page 19, lines 24-27. Once the script program 40 has been transferred, the central processing unit 18 will inform the remote processing apparatus 26. Thereafter, the communication link will be disconnected and a script interpreter within the remote processing apparatus 26 will be restarted, see page 15, Table 1, CONNECT command. The measuring device 28 measures data of the individual and transfers the measurements 44 to the remote processing apparatus 26, see page 5, lines 29-32. The collect command instructs the remote processing apparatus 26 to collect the measurement data 44 from the measuring device 28, see page 15, Table 1. Thereafter, the remote processing apparatus 26 may establish a subsequent communication link to the central processing unit 18, see page 22, lines 27-30. After the communication link has been established, the remote processing apparatus 26 transmits device measurements 44, query responses 42, scrip identification code and a patient or patient type identification code to the central processing unit 18, see page 22, lines 27-34.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The first ground of rejection is whether claims 47, 55-57, 77, 84, 91, 98, 105 and 107-110 are patentable under 35 U.S.C. §102(b) over Fujimoto, U.S. Patent No. 5,339,821.

The second ground of rejection is whether claims 48, 49, 51-54, 58-62, 78-83, 85-90, 92-97, 99-104 and 106 are patentable under 35 U.S.C. §103(a) over Fujimoto in view of Heinonen et al. et al., U.S. Patent No. 6,421,633.

VII. ARGUMENTS

A. 35 U.S.C. §102

As set forth on page 2 of the final Office Action,[1] claims 47, 55-57, 77, 84, 91, 98, 105 and 107-110 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fujimoto.

The Federal Circuit has stated: "A claim is anticipated only if ***each and every element*** as set forth in the claim is found, either ***expressly or inherently*** described, in a single prior art reference."[2] "The elements must be ***arranged as required by the claim***."[3] The Federal circuit has added that the anticipation determination is viewed from one of ordinary skill in the art: "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention."[4] As explained herein below, because Fujimoto does not disclose each and every element of the claims as arranged as in the claims, Fujimoto does not anticipate the claimed invention.

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[1] Mailed August 9, 2007.

[2] Manual of Patent Examining Procedure (M.P.E.P.), Eighth Edition, Rev. 6, September 2007, §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, USPQ2d 1051, 1053 (Fed Circ. 1987) (emphasis added).

[3] M.P.E.P. §2131 citing *In re Bond,* 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (emphasis added).

[4] *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991).

1. Claims 47 and 55-57 are patentable over Fujimoto

Claim 47 provides a central processing unit comprising (i) programming code configured to generate a script program that collects measurement data relating to a physiological condition of an individual. Appellant's representative will now show that the Examiner has not meet all of the requirements of *Verdegaal Bros.*, M.P.E.P. §2131 and *Scripps Clinic & Research Found.* for the above claim limitation, and several other limitations to follow, and thus did not establish anticipation of the claimed invention.

In the rejection, the Examiner appears to assert that the host computer 5 of Fujimoto is similar to the claimed central processing unit.[5] Regarding the claimed programming code within the central processing unit, the Examiner cites column 4, lines 12-68 of Fujimoto as follows:

> Measurement of the Blood Pressure and the Pulse
>
> (1) The medical terminal equipment 1 gives to the user a question "do you want to measure the blood pressure and the pulse" by way of the screen display of the liquid crystal display apparatus 14 and sound of the loudspeaker 13. The user enters its reply by means of either one of the operation buttons 15 and 16 for "Yes" and "No". In the case of the reply of "No", the control sequence returns to the start of the procedure without performing a measurement. On the contrary, in the case of the reply of "Yes", the control sequence advances to the next step.
>
> (2) The medical terminal equipment 1 gives another question "are you ready ?" by way of the screen display and sound as described above.
>
> (3) Subsequently, the medical terminal equipment 1 provides an instruction "please put on the arm band" to the user by way of the screen display and sound.
>
> (4) The user will open the cover 12, pick up the arm band 10 provided on the medical terminal equipment 1 and wrap it around one of the arms.
>
> (5) After the preparation for measurement is completed, the user will depress the operation button 15 for "Yes".
>
> (6) In response to the depression of the operation button 15, air is automatically fed into the arm band 10 from the pump 32 and then discharged so that a measurement of the blood pressure and the pulse is started, for example, in accordance with the oscillometric method. Here, when the user wants to interrupt the measurement, the operation button 17 for

[5] Final Office Action, page 2, paragraph (A).

"selection" will be depressed. Then, the measurement is interrupted immediately and the operation sequence returns to the step (1) described above.

(7) The result of the measurement is displayed in the following manner on the screen of the liquid crystal display unit 14.

Results of Measurement
Maximum Blood Pressure = 123 mmHg
Minimum Blood Pressure = 89 mmHg
Pulse = 60/minute

(8) The measurement of the blood pressure and the pulse is completed with this.

(9) Subsequently, the medical terminal equipment 1 gives a question "do you want to store the data ?" by way of the screen display and sound. If the operation button 16 for "No" is depressed, then the control sequence returns to the step (1) above without storing the measurement data. On the contrary, if the operation button 15 for "Yes" is depressed, then the measurement data are stored into the memory 33, thereby completing the procedure. (Fujimoto, column 4, lines 12-68)

Nowhere in the above text, or in any other section does Fujimoto appear to mention **programming code** generating **a script program** that collects measurement data relating to the physiological condition of the individual. In contrast, the above cited text discusses an interaction between the medical apparatus 8 and the patient. Furthermore, the cited text does not even mention the host computer 5 of Fujimoto where the claimed generation is alleged to take place. The Examiner is merely pointing to a block of text and asserting that the claimed elements under consideration are present and arranged as in the claim. However, a plain reading of the cited text of Fujimoto does not meet the anticipation threshold in the absence of any explanation by the Examiner of how the reference is being applied beyond the plain reading. In particular, the claimed programming code is simply missing from Fujimoto. Therefore, Fujimoto does not disclose or suggest a central processing unit comprising (i) programming code configured to generate a script program that collects measurement data relating to a physiological condition of an individual, as presently claimed.

Claim 47 further provides that the central processing unit comprises (ii) further programming code configured to assign the script program to the individual. In rejecting the claimed further programming code, the Examiner cites (i) column 4, lines 12-68 (reproduced above) and (ii) the column 8, lines 8-39 of Fujimoto as follows:

> Data transmitted from the user side communication apparatus 7 are set to the medical institution side communication apparatus 3 by means of a telephone line, a CATV line or a radio channel and stored into a hard disk or an opto-magnetic disk of the host computer 5 on the medical institution side. Then, the data are displayed immediately in accordance with the necessity. The host computer 5 on the medical institution side can naturally collect and store data for several hundreds to several thousands people using the external storage apparatus 7, automatically diagnose the collected data and transmit the result of the diagnosis to the user side, and pick up those data for which a diagnosis of a doctor is considered necessary and urge a diagnosis of a doctor. In addition, the host computer 5 can print the result of the diagnosis of the doctor together with data for the last one month by means of the printer 6 so that the data thus printed out may be delivered to the user. The automatic diagnosis of the host computer 5 involves, for example, checking of the pattern of the electrocardiographic waveform for the last one month to judge whether or not it has a significant variation or some abnormality, and if some abnormal condition is detected, a warning is issued. Further, the host computer 5 can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last one month, compare the data with national average values of the sex and the age and give a notice of the result of the automatic diagnosis like, for example, "You are overweight: how about getting thin ?" or "Your blood pressure is excessively high: take care so as not to take too much salt. (Fujimoto, column 8, lines 8-39)

Nowhere in any of the cited text, or in any other section does Fujimoto appear to mention any programming code configured to **assign a script program to an individual**. In contrast, the cited text from column 4, lines 12-68 discusses an interaction between the medical apparatus 8 and the patient. The cited text from column 8, lines 8-39 focuses on transmitting data from the medical apparatus 8 to the host computer 5 and subsequent presentation of the data to a doctor. Nothing in the text of Fujimoto appears to mention anything about assigning script programs to the patient. The Examiner must establish that Fujimoto expressly or inherently discloses all of the claim limitations

to sustain the rejection, but has failed to do so. Therefore, Fujimoto does not disclose or suggest that the central processing unit comprises (ii) further programming code configured to assign the script program to the individual, as presently claimed.

Claim 47 further provides a remote processing apparatus (i) connectable to a measuring device to receive measurement data according to a collect command contained in the script program. In the rejection of the claimed collect command, the Examiner cites (i) column 4, lines 12-68 (reproduced above), (ii) the column 8, lines 8-39 (reproduced above), (iii) column 2, lines 32-55 as follows and (iv) column 7, lines 25-54 of Fujimoto as follows:

> DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT
>
> Referring first to FIG. 1, there is shown a home medical system according to a preferred embodiment of the present invention. The home medical system shown includes a medical terminal equipment 1 for measuring the blood pressure, the pulse, the electrocardiogram and so forth, and a user side communication apparatus or link 2. A medical apparatus 8 is constituted from the medical terminal equipment 1 and the user side communication apparatus 2 and is installed at home of each user. The home medical system further includes a medical institution side communication apparatus or link 3, and a telecommunication line 4 based on, for example, a CATV (cable television) system interconnects the communication apparatus 2 and 3. It is to be noted that, though not shown, the communication apparatus and 3 may naturally be interconnected alternatively by a telephone line or by way of a radio channel. The home medical system further includes a host computer 5 with a display unit on the medical institution side, and additional equipments such as a printer apparatus 6 and an external storage apparatus 7 are provided for the host computer 5. (Fujimoto, column 2, lines 32-55)

> An inputting procedure for data of the weight proceeds in the following manner.
>
> (1) The medical terminal equipment 1 gives a question "do you want to record the weight ?" to the user by way of the screen display and sound.
>
> (2) The user will reply to the question by operation of the operation button 15 or 16 for "Yes" or "No". When the reply is "No", the weight is not recorded. On the contrary, when the reply is "Yes", recording of the weight is started.
>
> (3) The user will measure the weight by means of a weighing machine prepared by the user. Or else, the weight may have been measured in advance.
>
> (4) The weight value of 50 Kg is displayed on the display screen of the liquid crystal display unit 14. Each depression of the operation button 15 or 16 for "Yes" or "No"

increases or decreases the displayed weight value by 1 Kg. **The user will thus adjust the displayed weight value to a weight value detected by the measurement by itself and depress the operation button 17 for "selection".**

(5) The medical terminal equipment 1 gives a question "do you want to store the data ?" by way of the screen display and sound. If the operation button 16 for "No" is depressed, the control sequence returns to the step (1) without storing the weight value. On the contrary, if the operation button 15 for "Yes" is depressed, then the weight value is stored into the memory 33, thereby completing the weight data inputting procedure. (Fujimoto, column 7, lines 25-54, emphasis added)

Nowhere in the cited text does Fujimoto appear to mention a measuring device to receive measurement data **according to a collect command** contained in a script program. A weight machine is mentioned in column 7, lines 25-54 of Fujimoto. However, Fujimoto does not disclose that the weight machine is somehow connectable to the medical apparatus 8 or that the medical apparatus 8 receives data from the weight machine according to a collect command in a script program. Instead, Fujimoto indicates that the patients manually enter the measured weights. Fujimoto also shows an armband 10 connected to the medical apparatus 8 in FIG. 4. However, FIG. 5 of Fujimoto shows that measurements taken from the armband 10 are initiated by the patient manually pressing a button (OPERATION BUTTON (Yes) ON). A similar manual procedure is mentioned in column 5, lines 14-61 of Fujimoto using EKG electrodes 18 per the flow diagram of FIG. 6. The rest of Fujimoto appears to be silent regarding any type of collect command within a script program previously generated in the host computer 5 and transferred to the medical apparatus 8.

Assuming, *arguendo*, that either the operational text and/or the informational text of Fujimoto displayed to the patient is generated by a "script program", such a "script program" does not meet the claimed script program which is generated by the central processing unit and includes

collect commands according to which measurement data is collected. Although information text is described by Fujimoto as being displayed according to collected and communications data, the entered data is not in any way described by Fujimoto as being collected in accordance with a collect command of a script program transmitted from a central unit to the remote unit. The Examiner's reliance on simply making measurements in the course of a questionnaire does not establish an express or an inherent disclosure of commands in a script program. Therefore, Fujimoto does not disclose or suggest a remote processing apparatus (i) connectable to a measuring device to receive measurement data according to a collect command contained in the script program, as presently claimed.

Claim 47 further provides the remote processing apparatus is (ii) connectable to the central processing unit to transmit the measurement data to the central processing unit according to a transmit command contained in the script program. The Examiner cites (i) column 4, lines 12-68, (ii) column 8, lines 8-39, (iii) column 2, lines 32-55 and (iv) column 7, lines 25-54 of Fujimoto (all reproduced above) in rejecting the claimed collect command. In contrast, none of the cited text, or any section of Fujimoto appears to mention **a transmit command** in a script program causing measurement data to be sent from the medical apparatus 8 to the host computer 5. Fujimoto does discloses the transmission of data from the medical apparatus 8 to the host computer 5 in column 7, line 67 through column 8, line 7. However, nothing is said in Fujimoto about what initiates the transmission. Speculation about the present of a command executed in the medical apparatus 8 does not meet the burden for an express or inherent disclosure.

Assuming, *arguendo*, that either the operational text and/or the informational text of Fujimoto displayed to the patient is generated by a "script program", such a "script program" does not meet the claimed script program which is generated by the central processing unit and includes transmit command according to which the measurement data is transmitted. All of the data gathering scenarios described by Fujimoto appear to end with the data being stored in the memory 33. Since Fujimoto does not appear to explain what initiates a transfer from the medical apparatus 8 and the host computer 5, the Examiner cannot establish that the transfer is in accordance with a transmit command being executed by the medical apparatus 8. Therefore, Fujimoto does not disclose or suggest a remote processing apparatus that is (ii) connectable to the central processing unit to transmit the measurement data to the central processing unit according to a transmit command contained in the script program, as presently claimed.

Claim 47 further provides a workstation connectable to the central processing unit to receive the measurement data so that a health care provider may review a report generated based on the measurement data. The Examiner cites FIG. 1 and column 2, lines 32-44 (reproduced above) of Fujimoto in the rejection. In contrast, FIG. 1 and the text of Fujimoto only appears to mention that the host computer 5 is connected to a communication link 3, a printer 6, an external storage apparatus 7 and the medical apparatus 8. Nothing in Fujimoto hints at a workstation, let alone expressly discloses an actual workstation. Furthermore, the Examiner does not offer any explanation as to what element of Fujimoto is allegedly similar to the claimed workstation. Instead, the Examiner merely points to the cited text and asserts that something that is neither shown nor talked about is expressly present. Such a conclusory assertion cannot be sustained without evidence or

explanation. Therefore, Fujimoto does not disclose or suggest a workstation connectable to the central processing unit to receive the measurement data so that a health care provider may review a report generated based on the measurement data, as presently claimed.

In summary, the Examiner has not established all of the criteria necessary for anticipation. Several claimed elements are not expressly disclosed by Fujimoto and no attempt is being made by the Examiner to show that the missing elements are inherent to the system of Fujimoto. Therefore, Fujimoto does not anticipate claims 47 and 55-57 and the rejections should be reversed.

2. Claims 77 and 91 are patentable over Fujimoto

Claim 77 provides (A) storing a script assignment that associates a script program with an individual. Appellant's representative will now show that the Examiner has not meet all of the requirements of *Verdegaal Bros.*, M.P.E.P. §2131 and *Scripps Clinic & Research Found.* for the above claim limitation, and other limitations to follow, and thus did not establish anticipation of the claimed invention.

The Examiner cites column 8, lines 8-39 of Fujimoto in the rejection as follows:

> Data transmitted from the user side communication apparatus 7 are set to the medical institution side communication apparatus 3 by means of a telephone line, a CATV line or a radio channel and stored into a hard disk or an opto-magnetic disk of the host computer 5 on the medical institution side. Then, the data are displayed immediately in accordance with the necessity. The host computer 5 on the medical institution side can naturally collect and store data for several hundreds to several thousands people using the external storage apparatus 7, automatically diagnose the collected data and transmit the result of the diagnosis to the user side, and pick up those data for which a diagnosis of a doctor is considered necessary and urge a diagnosis of a doctor. In addition, the host computer 5 can print the result of the diagnosis of the doctor together with data for the last one month by

> means of the printer 6 so that the data thus printed out may be delivered to the user. The automatic diagnosis of the host computer 5 involves, for example, checking of the pattern of the electrocardiographic waveform for the last one month to judge whether or not it has a significant variation or some abnormality, and if some abnormal condition is detected, a warning is issued. Further, the host computer 5 can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last one month, compare the data with national average values of the sex and the age and give a notice of the result of the automatic diagnosis like, for example, "You are overweight: how about getting thin ?" or "Your blood pressure is excessively high: take care so as not to take too much salt. (Fujimoto, column 8, lines 8-39)

However, nowhere in the cited text, or in any other section does Fujimoto appear to mention an act of storing a script assignment that associates a script program with an individual. The cited text in column 8, lines 8-39 focuses on transmitting data from the medical apparatus 8 to the host computer 5 and subsequent presentation of the data to a doctor. Nothing is said about assigning script programs to patients or storing such assignments. In the absence of an express or an inherent disclosure, and in the further absence of any explanation of how Fujimoto is being applied, the Examiner's assertion that Fujimoto anticipates the claimed limitations is merely a conclusory statement that cannot be sustained for lack of evidence. The disclosure of Fujimoto that the host computer 5 can receive data from several patients says nothing about assigning script programs to those patients. Therefore, Fujimoto does not disclose or suggest storing a script assignment that associates a script program with an individual, as presently claimed.

Claim 77 further provides (C) transferring the script program from a central processing unit to a remote processing apparatus and (D) executing the script program in the remote processing apparatus to collect measurement data from a measuring device. The Examiner appears to assert that (i) a medical apparatus 8 of Fujimoto is similar to the claimed remote processing

apparatus and (ii) a host computer 5 of Fujimoto is similar to the claimed central processing unit.[6] However, the Examiner does not cite any text or elements in the figures of Fujimoto in rejecting both (C) the transferring step and (D) the executing step. Therefore, anticipation has not been established due to the lack of evidence that Fujimoto discloses all of the claim limitations as arranged in the claims.

Furthermore, Fujimoto appears to be silent regarding a script program being executed in the medical apparatus 8 to collect data from a measuring device. Fujimoto does show an armband 10 connected to the medical apparatus 8 in FIG. 4. However, FIG. 5 of Fujimoto shows that measurements taken from the armband 10 are manually initiated by the press of a button (OPERATION BUTTON (Yes) ON), not by the execution of a script program. A similar manual-type procedure is mentioned in column 5, lines 14-61 of Fujimoto using EKG electrodes 18 per the flow diagram of FIG. 6. The rest of Fujimoto appears to be silent regarding any script program transferred from the host computer 5 to the medical apparatus 8 that when executed causes data to be collected from a measuring device. Therefore, Fujimoto does not disclose or suggest (C) transferring the script program from a central processing unit to a remote processing apparatus and (D) executing the script program in the remote processing apparatus to collect measurement data from a measuring device, as presently claimed.

Claim 77 further provides (E) transmitting the measurement data from the remote processing apparatus to the central processing unit upon execution of a transmit command of the

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[6] Final Office Action, page 4, paragraph (F).

script program. In the rejection, the Examiner cites (i) column 4, lines 14-68 and (ii) column 8, lines 8-39 of Fujimoto as follows:

> Measurement of the Blood Pressure and the Pulse
>
> (1) The medical terminal equipment 1 gives to the user a question "do you want to measure the blood pressure and the pulse" by way of the screen display of the liquid crystal display apparatus 14 and sound of the loudspeaker 13. The user enters its reply by means of either one of the operation buttons 15 and 16 for "Yes" and "No". In the case of the reply of "No", the control sequence returns to the start of the procedure without performing a measurement. On the contrary, in the case of the reply of "Yes", the control sequence advances to the next step.
>
> (2) The medical terminal equipment 1 gives another question "are you ready ?" by way of the screen display and sound as described above.
>
> (3) Subsequently, the medical terminal equipment 1 provides an instruction "please put on the arm band" to the user by way of the screen display and sound.
>
> (4) The user will open the cover 12, pick up the arm band 10 provided on the medical terminal equipment 1 and wrap it around one of the arms.
>
> (5) After the preparation for measurement is completed, the user will depress the operation button 15 for "Yes".
>
> (6) In response to the depression of the operation button 15, air is automatically fed into the arm band 10 from the pump 32 and then discharged so that a measurement of the blood pressure and the pulse is started, for example, in accordance with the oscillometric method. Here, when the user wants to interrupt the measurement, the operation button 17 for "selection" will be depressed. Then, the measurement is interrupted immediately and the operation sequence returns to the step (1) described above.
>
> (7) The result of the measurement is displayed in the following manner on the screen of the liquid crystal display unit 14.
>
> Results of Measurement
> Maximum Blood Pressure = 123 mmHg
> Minimum Blood Pressure = 89 mmHg
> Pulse = 60/minute
>
> (8) The measurement of the blood pressure and the pulse is completed with this.
>
> (9) Subsequently, the medical terminal equipment 1 gives a question "do you want to store the data ?" by way of the screen display and sound. If the operation button 16 for "No" is depressed, then the control sequence returns to the step (1) above without storing the measurement data. On the contrary, if the operation button 15 for "Yes" is depressed, then the measurement data are stored into the memory 33, thereby completing the procedure. (Fujimoto, column 4, lines 12-68)

Data transmitted from the user side communication apparatus 7 are set to the medical institution side communication apparatus 3 by means of a telephone line, a CATV line or

> a radio channel and stored into a hard disk or an opto-magnetic disk of the host computer 5 on the medical institution side. Then, the data are displayed immediately in accordance with the necessity. The host computer 5 on the medical institution side can naturally collect and store data for several hundreds to several thousands people using the external storage apparatus 7, automatically diagnose the collected data and transmit the result of the diagnosis to the user side, and pick up those data for which a diagnosis of a doctor is considered necessary and urge a diagnosis of a doctor. In addition, the host computer 5 can print the result of the diagnosis of the doctor together with data for the last one month by means of the printer 6 so that the data thus printed out may be delivered to the user. The automatic diagnosis of the host computer 5 involves, for example, checking of the pattern of the electrocardiographic waveform for the last one month to judge whether or not it has a significant variation or some abnormality, and if some abnormal condition is detected, a warning is issued. Further, the host computer 5 can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last one month, compare the data with national average values of the sex and the age and give a notice of the result of the automatic diagnosis like, for example, "You are overweight: how about getting thin ?" or "Your blood pressure is excessively high: take care so as not to take too much salt. (Fujimoto, column 8, lines 8-39)

Nowhere in the cited text, or any other section does Fujimoto appear to mention **a transmit command in a script program** causing measurement data to be sent from the medical apparatus 8 to the host computer 5. Fujimoto discloses the transmission of data from the medical apparatus 8 to the host computer 5 in column 7, line 67 through column 8, line 7, but says noting about what initiates the transmission. Speculation about the presence of a command being executed in the medical apparatus 8 does not meet the anticipation burden for an express or an inherent disclosure.

Assuming, *arguendo*, that either the operational text and/or the informational text of Fujimoto displayed to the patient is generated by a "script program", such a "script program" does not meet the claimed script program which is generated by the central processing unit and includes transmit command according to which the measurement data is transmitted. All of the data gathering scenarios described by Fujimoto appear to end with the data being stored in the memory 33. Since Fujimoto does not appear to explain what initiates the transfers from the medical apparatus 8 and the

host computer 5, the Examiner cannot establish that any of the transfers are in accordance with a transmit command in a script program being executed by the medical apparatus 8. Therefore, Fujimoto does not disclose or suggest transmitting the measurement data from the remote processing apparatus to the central processing unit upon execution of a transmit command of the script program, as presently claimed.

In summary, the Examiner has not established all of the criteria necessary for anticipation. Several claimed elements are not expressly disclosed by Fujimoto and no attempt is being made by the Examiner to show that the missing elements are inherent to the system of Fujimoto. Therefore, Fujimoto does not anticipate claims 77 and 79 and the rejections should be reversed.

3. Claims 84 and 98 are patentable over Fujimoto

Claim 84 provides (A) transmitting a script program through a communication link from a central processing unit to a remote programming apparatus and (B) disconnecting the communication link after the scrip program has been transmitted. Appellant's representative will now show that the Examiner has not meet all of the requirements of *Verdegaal Bros.*, M.P.E.P. §2131 and *Scripps Clinic & Research Found.* for the above claim limitation, and other limitations to follow, and thus did not establish anticipation of the claimed invention.

The Examiner appears to be asserting that (i) a host computer 5 of Fujimoto is similar to the claimed central processing unit and (ii) a medical apparatus 8 of Fujimoto is similar to the

claimed remote processing apparatus.[7] The text in column 8, lines 8-39 of Fujimoto is cited by the Examiner in rejecting the claimed disconnecting:

> Data transmitted from the user side communication apparatus 7 are set to the medical institution side communication apparatus 3 by means of a telephone line, a CATV line or a radio channel and stored into a hard disk or an opto-magnetic disk of the host computer 5 on the medical institution side. Then, the data are displayed immediately in accordance with the necessity. The host computer 5 on the medical institution side can naturally collect and store data for several hundreds to several thousands people using the external storage apparatus 7, automatically diagnose the collected data and transmit the result of the diagnosis to the user side, and pick up those data for which a diagnosis of a doctor is considered necessary and urge a diagnosis of a doctor. In addition, the host computer 5 can print the result of the diagnosis of the doctor together with data for the last one month by means of the printer 6 so that the data thus printed out may be delivered to the user. The automatic diagnosis of the host computer 5 involves, for example, checking of the pattern of the electrocardiographic waveform for the last one month to judge whether or not it has a significant variation or some abnormality, and if some abnormal condition is detected, a warning is issued. Further, the host computer 5 can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last one month, compare the data with national average values of the sex and the age and give a notice of the result of the automatic diagnosis like, for example, "You are overweight: how about getting thin ?" or "Your blood pressure is excessively high: take care so as not to take too much salt. (Fujimoto, column 8, lines 8-39)

However, nowhere in the cited text, or in any other section does Fujimoto appear to mention disconnecting a communication link on a telecommunication line 4 after a program has been transmitted from the host computer 5 to the medical apparatus 8. The above cited text merely states that data can be send from a user side (medical apparatus 8) to a medical institution side (host computer 5). In contrast to the claim, Fujimoto is basically silent regarding when communication links are established on the telecommunication line 4 and when, if ever, those communication links are disconnected. Therefore, Fujimoto does not disclose or suggest transmitting a script program through a communication link from a central processing unit to a remote programming apparatus and

[7] Final Office Action, page 4, paragraph (F).

disconnecting the communication link after the scrip program has been transmitted, as presently claimed.

Claim 84 further provides (C) collecting measurement data in the remote processing apparatus as received from a measuring device according to a collect command of the script program. In the rejection, the Examiner cites (i) column 4, lines 12-68 and (ii) column 8, lines 8-39 of Fujimoto as follows:

> Measurement of the Blood Pressure and the Pulse
>
> (1) The medical terminal equipment 1 gives to the user a question "do you want to measure the blood pressure and the pulse" by way of the screen display of the liquid crystal display apparatus 14 and sound of the loudspeaker 13. The user enters its reply by means of either one of the operation buttons 15 and 16 for "Yes" and "No". In the case of the reply of "No", the control sequence returns to the start of the procedure without performing a measurement. On the contrary, in the case of the reply of "Yes", the control sequence advances to the next step.
>
> (2) The medical terminal equipment 1 gives another question "are you ready ?" by way of the screen display and sound as described above.
>
> (3) Subsequently, the medical terminal equipment 1 provides an instruction "please put on the arm band" to the user by way of the screen display and sound.
>
> (4) The user will open the cover 12, pick up the arm band 10 provided on the medical terminal equipment 1 and wrap it around one of the arms.
>
> (5) After the preparation for measurement is completed, the user will depress the operation button 15 for "Yes".
>
> (6) In response to the depression of the operation button 15, air is automatically fed into the arm band 10 from the pump 32 and then discharged so that a measurement of the blood pressure and the pulse is started, for example, in accordance with the oscillometric method. Here, when the user wants to interrupt the measurement, the operation button 17 for "selection" will be depressed. Then, the measurement is interrupted immediately and the operation sequence returns to the step (1) described above.
>
> (7) The result of the measurement is displayed in the following manner on the screen of the liquid crystal display unit 14.
>
> Results of Measurement
>
> Maximum Blood Pressure = 123 mmHg
>
> Minimum Blood Pressure = 89 mmHg
>
> Pulse = 60/minute
>
> (8) The measurement of the blood pressure and the pulse is completed with this.

(9) Subsequently, the medical terminal equipment 1 gives a question "do you want to store the data ?" by way of the screen display and sound. If the operation button 16 for "No" is depressed, then the control sequence returns to the step (1) above without storing the measurement data. On the contrary, if the operation button 15 for "Yes" is depressed, then the measurement data are stored into the memory 33, thereby completing the procedure. (Fujimoto, column 4, lines 12-68)

Data transmitted from the user side communication apparatus 7 are set to the medical institution side communication apparatus 3 by means of a telephone line, a CATV line or a radio channel and stored into a hard disk or an opto-magnetic disk of the host computer 5 on the medical institution side. Then, the data are displayed immediately in accordance with the necessity. The host computer 5 on the medical institution side can naturally collect and store data for several hundreds to several thousands people using the external storage apparatus 7, automatically diagnose the collected data and transmit the result of the diagnosis to the user side, and pick up those data for which a diagnosis of a doctor is considered necessary and urge a diagnosis of a doctor. In addition, the host computer 5 can print the result of the diagnosis of the doctor together with data for the last one month by means of the printer 6 so that the data thus printed out may be delivered to the user. The automatic diagnosis of the host computer 5 involves, for example, checking of the pattern of the electrocardiographic waveform for the last one month to judge whether or not it has a significant variation or some abnormality, and if some abnormal condition is detected, a warning is issued. Further, the host computer 5 can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last one month, compare the data with national average values of the sex and the age and give a notice of the result of the automatic diagnosis like, for example, "You are overweight: how about getting thin ?" or "Your blood pressure is excessively high: take care so as not to take too much salt. (Fujimoto, column 8, lines 8-39)

Nowhere in the cited text does Fujimoto appear to mention a measuring device receiving measurement data according to a collect command contained in the script program. Fujimoto does show an armband 10 connected to the medical apparatus 8 in FIG. 4. However, FIG. 5 of Fujimoto shows that measurements taken from the armband 10 are initiated by the patient manually pressing a button (OPERATION BUTTON (Yes) ON). Nothing is said about a collect command of a script program causing the data to be collected. A similar manual procedure is mentioned in column 5, lines 14-61 of Fujimoto using EKG electrodes 18 per the flow diagram of FIG. 6. The rest of

Fujimoto appears to be silent regarding any type of collect command within a script program previously generated in the host computer 5 and transferred to the medical apparatus 8.

Assuming, *arguendo*, that either the operational text and/or the informational text of Fujimoto displayed to the patient is generated by a "script program", such a "script program" does not meet the claimed script program which is generated by the central processing unit 18 and includes collect commands according to which measurement data 44 is collected. Although information text is described by Fujimoto as being displayed according to collected and communications data, the entered data is not in any way described by Fujimoto as being by collected in accordance with a collect command of a script program transmitted from a central unit to the remote unit. The Examiner's reliance on measurements simply being made in the course of a questionnaire does not establish an express or an inherent disclosure of commands in a script program. Therefore, Fujimoto does not disclose or suggest collecting measurement data in the remote processing apparatus as received from a measuring device according to a collect command of the script program, as presently claimed.

In summary, the Examiner has not established all of the criteria necessary for anticipation. Several claimed steps are not expressly disclosed by Fujimoto and no attempt is being made by the Examiner to show that the missing elements are inherent to the system of Fujimoto. Therefore, Fujimoto does not anticipate claims 84 and 98 and the rejections should be reversed.

4. Claims 105 and 107-110 are patentable over Fujimoto

Claims 105 and 107-110 depend, directly or indirectly, from claims 47, 77, 84, 91 and 98 respectively and, therefore, include all the limitations of associated claims 47, 77, 84, 91 and 98. Consequently, the arguments presented above in support of claims 47, 77, 84, 91 and 98 are hereby incorporated by reference in support of claims 105 and 107-110. However, these claims, in particular claim 105, recites a further limitation that the remote processing apparatus is configured to intermittently establish a communication link with the central processing unit and (ii) disconnect the communication link after a period of time after each establishment (see, for example, elements 328 and 334 in FIG. 12C).

The Examiner cites column 8, lines 8-39 (reproduced above in the remarks for claim 47) of Fujimoto in the rejection. However, nowhere in the cited text, or in any other section does Fujimoto appear to mention that the medical apparatus 8 both (i) **intermittently** establishes a communication link on the telecommunication line 4 and (ii) disconnects the communication link after **a period of time after each establishment**. The cited text merely states that data can be send from a user side (medical apparatus 8) to a medical institution side (host computer 5). In contrast to the claim, Fujimoto is basically silent regarding when communication links are established on the telecommunication line 4 and when, if ever, those communication links are disconnected. The Examiner does not provide any arguments, other than "this feature is taught in Fujimoto"[8], why one of ordinary skill in the art reading the cited text would see both (i) an intermittent connection and (ii) a disconnection a period of time after each connection. Therefore, Fujimoto does not disclose

[8] Final Office Action, page 5, paragraph (H).

or suggest that the remote processing apparatus is configured to intermittently establish a communication link with the central processing unit and (ii) disconnect the communication link after a period of time after each establishment, as presently claimed.

The Examiner further asserts that intermitted connections are inherent to Fujimoto because "normally a telephone is not used to solely and exclusively communication with only one other telephone link."[9] However, inherency requires certainty of results, not mere possibility.[10] In the instant case, the Examiner basically admits that intermittent connections are not a certainty, but rather such behavior is merely "normal".[11] Furthermore, Fujimoto teaches that the telecommunication link 4 may also be implemented as a cable television system. Common cable modems used within cable television systems generally establish a communication link once and then maintain that link indefinitely. Therefore, inherency has not been established due to the lack of evidence that a communication link across the telecommunication line 4 of Fujimoto is necessarily established intermittently, as presently claimed. The Examiner does not make an inherency argument for the claimed period of time after each establishment. Thus, for the reasons described above, claims 105 and 107-110 are independently patentable over the cited reference and the rejections should be reversed.

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[9] Final Office Action, page 5, paragraph (H).

[10] See, e.g., *Ethyl Molded Products Co. v. Betts Package, Inc.*, 9 U.S.P.Q. 2d 1001 (E.D.Ky 1988). See also, In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (C.C.P.A. 1981).

[11] Final Office Action, page 5, paragraph (H).

B. 35 U.S.C. §103

As set forth on pages 5 and 7-11 of the final Office Action,[12] claims 48, 49, 51-54, 58-62, 78-83, 85-90, 92-97, 99-104 and 106 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujimoto in view of Heinonen et al.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.[13] If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of non-obviousness.[14] ***The Examiner must show*** that (a) there is some ***suggestion or motivation***, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, (b) there is ***a reasonable expectation of success***, and (c) the prior art reference (or combination of references) teaches or suggests ***all of the claim limitations***.[15] "The motivation, suggestion or teaching may come explicitly from statement in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved."[16] Furthermore, The Court of Appeals for the Federal Circuit has indicated that the requirement for showing the teaching of motivation to combine references is "***rigorous***" and must be "***clear and particular***".[17] "[T]o establish obviousness based

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[12] Mailed August 9, 2007.

[13] M.P.E.P §2142.

[14] M.P.E.P. §2142.

[15] M.P.E.P. §2142.

[16] *In re Huston* 308, F.3d 1267, 1278, 64 USPQ2d 1810, 1810 (Fed. Cir. 2002), citing *In re Katzab* 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)

[17] *In re Anita Dembiczak* and *Benson Zinbarg*, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999)

on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of ***making the specific combination that was made by the applicants.***"[18] "[T]he factual inquiry whether to combine references must be ***thorough and searching***."[19] "This factual question ... [cannot] be resolved on subjective belief and unknown authority."[20] "It must be ***based on objective evidence of record***."[21] The Federal Circuit has held that both the suggestion to modify or combine the references and the reasonable expectation success must be found in the prior art itself, not merely in Appellant's disclosure.[22] Furthermore, the Board has held that the claimed invention is obvious only if either the references expressly or implicitly suggest the claimed invention, or a convincing line of reasoning is presented by the examiner as to why an artisan would have found the claimed invention to be obvious in light of the teachings of the cited references.[23]

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[18] *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000) (citing *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)).

[19] *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001).

[20] *In re Lee*, 277 F.3d 1338, 1343-44, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

[21] *In re Lee* at 1343, 61 USPQ2d at 1434.

[22] See *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991).

[23] See *Ex Parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985) (emphasis added by Appellant).

1. Claims 59, 60 and 62 are patentable over Fujimoto in view of Heinonen et al.

Claim 59 provides a system for monitoring a physiological condition of an individual using a computer network. Appellant's representative will now show that the Examiner did not meet all of the requirements of M.P.E.P. §2142 for the above claim limitation, and other limitations to follow, and thus did not establish *prima facie* obviousness.

Heinonen et al. are not valid prior art for the 35 U.S.C. §103(a) rejection. Heinonen et al. was first filed in the United States on May 21, 1998. In contrast, the present application claims priority to United States Patent No. 6,101,478 to Brown (hereafter Brown '478), which was filed November 21, 1997 and fully supports all of the pending claims. As such, the rejection of claim 59 is improper for reliance on a non-prior art document and thus should be reversed.

Support for the system of claim 59 may be found in Brown '478 in at least (i) FIGS. 1 and 2 and (ii) the text in column 3, lines 19-34. Support for the rest of the elements in claim 59 is embedded in the claim text as follows: the central processing unit (FIG. 1 server 18, column 3 lines 34-51)(A) having access to one or more databases (FIG. 2 box 38, column 6 lines 53-62) and (B) configured to perform operations according to monitoring application programming (FIG. 2 box 48, column 8 lines 35-38), the central processing unit comprising (i) programming code (FIG. 2 script generator 50, column 8 lines 38-42) configured to generate a script program (column 9 Table 1 and FIGS. 6A-6B) that collects blood glucose data (column 8 line 55) relating to the physiological condition of the individual and (ii) further programming code (FIG. 2 script assignor 52, column 10 lines 13-19) configured to assign the script program to the individual; a remote processing apparatus (FIG. 1, remote apparatus 26, column 3 line 52-column 4 line 5)(i) connectable to a measuring

device (FIG. 1, monitoring device 28, column 4 lines 6-11) and to receive the blood glucose data according to a collect command (column 9 Table 1) in the script program and (ii) connectable to the central processing unit (FIG. 1) and a workstation (FIG. 1 box 20, column 3 lines 49-51) connectable to the central processing unit to receive the blood glucose data so that a health care provider may review a report (FIG. 10, column 11 lines 2-8) generated based on the blood glucose data.

Assuming, *arguendo*, that Heinonen et al. are valid prior art (for which Appellant's representative does not necessarily agree), the following remarks address the shortcomings of the proposed combination of Fujimoto and Heinonen et al.

Claim 59 provides a central processing unit comprising (i) programming code configured to generate a script program that collects blood glucose data relating to a physiological condition of an individual. In the rejection, the Examiner appears to be asserting that the host computer 5 of Fujimoto is similar to the claimed central processing unit.[24] Regarding the claimed programming code within the central processing unit, the Examiner cites column 4, lines 12-68 of Fujimoto as follows:

> Measurement of the Blood Pressure and the Pulse
>
> (1) The medical terminal equipment 1 gives to the user a question "do you want to measure the blood pressure and the pulse" by way of the screen display of the liquid crystal display apparatus 14 and sound of the loudspeaker 13. The user enters its reply by means of either one of the operation buttons 15 and 16 for "Yes" and "No". In the case of the reply of "No", the control sequence returns to the start of the procedure without performing a measurement. On the contrary, in the case of the reply of "Yes", the control sequence advances to the next step.
>
> (2) The medical terminal equipment 1 gives another question "are you ready ?" by way of the screen display and sound as described above.
>
> (3) Subsequently, the medical terminal equipment 1 provides an instruction "please put on the arm band" to the user by way of the screen display and sound.

[24] Final Office Action, page 7, paragraph (A) citing page 2, paragraph (A).

(4) The user will open the cover 12, pick up the arm band 10 provided on the medical terminal equipment 1 and wrap it around one of the arms.

(5) After the preparation for measurement is completed, the user will depress the operation button 15 for "Yes".

(6) In response to the depression of the operation button 15, air is automatically fed into the arm band 10 from the pump 32 and then discharged so that a measurement of the blood pressure and the pulse is started, for example, in accordance with the oscillometric method. Here, when the user wants to interrupt the measurement, the operation button 17 for "selection" will be depressed. Then, the measurement is interrupted immediately and the operation sequence returns to the step (1) described above.

(7) The result of the measurement is displayed in the following manner on the screen of the liquid crystal display unit 14.

Results of Measurement

Maximum Blood Pressure = 123 mmHg

Minimum Blood Pressure = 89 mmHg

Pulse = 60/minute

(8) The measurement of the blood pressure and the pulse is completed with this.

(9) Subsequently, the medical terminal equipment 1 gives a question "do you want to store the data ?" by way of the screen display and sound. If the operation button 16 for "No" is depressed, then the control sequence returns to the step (1) above without storing the measurement data. On the contrary, if the operation button 15 for "Yes" is depressed, then the measurement data are stored into the memory 33, thereby completing the procedure. (Fujimoto, column 4, lines 12-68)

Nowhere in the above text, or in any other section does Fujimoto appear to mention **programming code** that generates a script program that collects measurement data relating to the physiological condition of the individual. In contrast, the above cited text only appears to discuss an interaction between the medical apparatus 8 and the patient. Furthermore, the cited text does not even mention the host computer 5 of Fujimoto where the claimed generation is alleged to take place. The Examiner is merely pointing to a block of text and asserting that the claimed elements are both present and arranged as in the claim. However, a plain reading of the text of Fujimoto does not appear to meet the anticipation threshold in the absence of any explanation by the Examiner of how the reference is being applied. Heinonen et al. do not appear to cure the deficiencies of Fujimoto.

Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest a central processing unit comprising (i) programming code configured to generate a script program that collects blood glucose data relating to a physiological condition of an individual, as presently claimed.

Claim 59 further provides that the central processing unit comprises (ii) further programming code configured to assign the script program to the individual. In rejecting the claimed "further programming code", the Examiner cites (i) column 4, lines 12-68 of Fujimoto (reproduced above) and (ii) column 8, lines 8-39 of Fujimoto as follows:

> Data transmitted from the user side communication apparatus 7 are set to the medical institution side communication apparatus 3 by means of a telephone line, a CATV line or a radio channel and stored into a hard disk or an opto-magnetic disk of the host computer 5 on the medical institution side. Then, the data are displayed immediately in accordance with the necessity. The host computer 5 on the medical institution side can naturally collect and store data for several hundreds to several thousands people using the external storage apparatus 7, automatically diagnose the collected data and transmit the result of the diagnosis to the user side, and pick up those data for which a diagnosis of a doctor is considered necessary and urge a diagnosis of a doctor. In addition, the host computer 5 can print the result of the diagnosis of the doctor together with data for the last one month by means of the printer 6 so that the data thus printed out may be delivered to the user. The automatic diagnosis of the host computer 5 involves, for example, checking of the pattern of the electrocardiographic waveform for the last one month to judge whether or not it has a significant variation or some abnormality, and if some abnormal condition is detected, a warning is issued. Further, the host computer 5 can provide a display of a variation graph of the blood pressure, the pulse, the body temperature, the weight and so forth for the last one month, compare the data with national average values of the sex and the age and give a notice of the result of the automatic diagnosis like, for example, "You are overweight: how about getting thin ?" or "Your blood pressure is excessively high: take care so as not to take too much salt. (Fujimoto, column 8, lines 8-39)

However, nowhere in the cited text, or in any other section does Fujimoto appear to mention any **programming code** configured to assign a script program to an individual. In contrast, the cited text from column 4, lines 12-68 of Fujimoto discusses an interaction between the medical apparatus 8

and the patient. The cited text from column 8, lines 8-39 focuses on transmitting data from the medical apparatus 8 to the host computer 5 and subsequent presentation of the data to a doctor. Nothing in the text of Fujimoto appears to mention anything about assigning script programs to the patient. The Examiner must establish that Fujimoto expressly or inherently discloses the claim limitations to sustain the rejection, but has failed to do so. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest that the central processing unit comprises (ii) further programming code configured to assign the script program to the individual, as presently claimed.

Claim 59 further provides a remote processing apparatus (i) connectable to a measuring device to receive blood glucose data according to a collect command contained in the script program. In the rejection of the claimed collect command, the Examiner cites (i) column 4, lines 12-68 (reproduced above), (ii) column 8, lines 8-39(reproduced above), (iii) column 2, lines 32-55 as follows and (iv) and column 7, lines 25-54 of Fujimoto as follows:

> DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT
>
> Referring first to FIG. 1, there is shown a home medical system according to a preferred embodiment of the present invention. The home medical system shown includes a medical terminal equipment 1 for measuring the blood pressure, the pulse, the electrocardiogram and so forth, and a user side communication apparatus or link 2. A medical apparatus 8 is constituted from the medical terminal equipment 1 and the user side communication apparatus 2 and is installed at home of each user. The home medical system further includes a medical institution side communication apparatus or link 3, and a telecommunication line 4 based on, for example, a CATV (cable television) system interconnects the communication apparatus 2 and 3. It is to be noted that, though not shown, the communication apparatus and 3 may naturally be interconnected alternatively by a telephone line or by way of a radio channel. The home medical system further includes a host computer 5 with a display unit on the medical institution side, and additional equipments such as a printer apparatus 6 and an external storage apparatus 7 are provided for the host computer 5. (Fujimoto, column 2, lines 32-55)

An inputting procedure for data of the weight proceeds in the following manner.

(1) The medical terminal equipment 1 gives a question "do you want to record the weight ?" to the user by way of the screen display and sound.

(2) The user will reply to the question by operation of the operation button 15 or 16 for "Yes" or "No". When the reply is "No", the weight is not recorded. On the contrary, when the reply is "Yes", recording of the weight is started.

(3) The user will measure the weight by means of a weighing machine prepared by the user. Or else, the weight may have been measured in advance.

(4) The weight value of 50 Kg is displayed on the display screen of the liquid crystal display unit 14. Each depression of the operation button 15 or 16 for "Yes" or "No" increases or decreases the displayed weight value by 1 Kg. **The user will thus adjust the displayed weight value to a weight value detected by the measurement by itself and depress the operation button 17 for "selection".**

(5) The medical terminal equipment 1 gives a question "do you want to store the data ?" by way of the screen display and sound. If the operation button 16 for "No" is depressed, the control sequence returns to the step (1) without storing the weight value. On the contrary, if the operation button 15 for "Yes" is depressed, then the weight value is stored into the memory 33, thereby completing the weight data inputting procedure. (Fujimoto, column 7, lines 25-54, emphasis added)

Nowhere in the cited text does Fujimoto appear to mention a measuring device to receive measurement data according to a collect command contained in the script program. Fujimoto does mention a weight machine in column 7, lines 25-54. However, Fujimoto does not disclose that the weight machine (i) is somehow connectable to the medical apparatus 8 or (ii) that the medical apparatus 8 receiving data from the weight machine according to a command in a script program. Instead, Fujimoto states that patient manually enters the measured weight. Fujimoto also shows an armband 10 connected to the medical apparatus 8 in FIG. 4. However, FIG. 5 of Fujimoto shows that measurements taken from the armband 10 are initiated by the patient manually pressing a button (OPERATION BUTTON (Yes) ON). A similar manual procedure is mentioned in column 5, lines 14-61 of Fujimoto using EKG electrodes 18 per the flow diagram of FIG. 6. The rest of Fujimoto

appears to be silent regarding any type of collect command within a script program previously generated in the host computer 5 and transferred to the medical apparatus 8.

Assuming, *arguendo*, that either the operational text and/or the informational text of Fujimoto displayed to the patient is generated by a "script program", such a "script program" does not meet the claimed script program which is generated by the central processing unit and includes collect commands according to which measurement data is collected. Although information text is described by Fujimoto as being displayed according to collected and communications data, the entered data is not in any way described by Fujimoto as being by collected in accordance with a collect command of a script program transmitted from a central unit to the remote unit. The Examiner's reliance on the measurements simply being made in the course of questionnaire does not establish an express or inherent disclose of commands in a script program. Heinonen et al. do not appear to cure the deficiency of Fujimoto. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest a remote processing apparatus (i) connectable to a measuring device to receive blood glucose data according to a collect command contained in the script program, as presently claimed.

Claim 59 further provides a workstation connectable to the central processing unit to receive the blood glucose data so that a health care provider may review a report generated based on the measurement data. The Examiner cites FIG. 1 and a portion of the text reproduced above from column 2 of Fujimoto.[25] In contrast, FIG. 1 and all of the text of Fujimoto only mentions that the host computer 5 is connected to a communication link 3, a printer 6, an external storage

[25] Final Office Action, page 7 paragraph (A) citing page 3.

apparatus 7 and the medical apparatus 8. Nothing in Fujimoto hints at a workstation, let alone expressly discloses a workstation. Furthermore, the Examiner does not offer any explanation as to what element of Fujimoto is allegedly similar to the claimed workstation. Instead, the Examiner merely points to the cited text and asserts that something that is neither shown nor talked about is present. Such a conclusory assertion cannot be sustained without evidence or explanation. Therefore, Fujimoto does not disclose or suggest a workstation connectable to the central processing unit to receive the blood glucose data so that a health care provider may review a report generated based on the measurement data, as presently claimed.

In summary, the Examiner has not established all of the criteria necessary for *prima facie* obviousness. Several claimed elements are not taught by Fujimoto and Heinonen et al. and no attempt is being made by the Examiner to show that the missing elements are inherent to the proposed combination of Fujimoto and Heinonen et al. Therefore, Fujimoto and Heinonen et al. do not anticipate the claimed invention and the rejections of claims 59, 60 and 62 should be reversed.

2. Claims 48, 51 and 58 are patentable over Fujimoto in view of Heinonen et al.

Claims 48, 51 and 58 depend, directly or indirectly, from claim 47 and, therefore, include all the limitations of claim 47. Consequently, the arguments presented above in support of claim 47 are hereby incorporated by reference in support of claims 48, 51, and 58. However, these claims, in particular claim 48, recite a further limitation that a physiological condition comprises diabetes, a measuring device comprises a blood glucose measurement device and measurement data comprises blood glucose data.(see, for example, element 64 in FIG. 9).

Heinonen et al. are not valid prior art for the 35 U.S.C. §103(a) rejection. Heinonen et al. was first filed in the United States on May 21, 1998. In contrast, the present application claims priority to United States Patent No. 6,101,478 to Brown (hereafter Brown '478), which was filed November 21, 1997 and fully supports all of the pending claims. As such, the rejection of claims 48, 51 and 58 is improper and should be reversed.

Support for the claimed system of independent base claim 47 may be found in Brown '478 in at least FIGS. 1 and 2 and the text in column 3, lines 19-34. Support for the rest of the claim is embedded in the claim text as follows: the central processing unit (FIG. 1 server 18, column 3 lines 34-51)(A) having access to one or more databases (FIG. 2 box 38, column 6 lines 53-620 and (B) configured to perform operations according to monitoring application programming (FIG. 2 box 48, column 8 lines 35-38) , the central processing unit comprising (i) programming code (FIG. 2 script generator 50, column 8 lines 38-42) configured to generate a script program (FIG. 2 box 40, column 9 Table 1 and FIGS. 6A-6B) that collects measurement data (column 8 line 55) relating to the physiological condition of the individual and (ii) further programming code (FIG. 2 script assignor 52, column 10 lines 13-19) configured to assign the script program to the individual; a remote processing apparatus (FIG. 1 remote apparatus 26, column 3 line 52-column 4 line 5)(i) connectable to a measuring device (FIG. 1 monitoring device 28, column 4 lines 6-11) to receive the measurement data according to a collect command (column 9 Table 1) in the script program and (ii) connectable to the central processing unit (FIG. 1) to transmit the measurement data to the central processing unit according to a transmit command contained in the script program (column 9 Table 1, CONNECT command); and a workstation (FIG. 1 box 20, column 3 lines49-51) connectable to

the central processing unit to receive the blood glucose data so that a health care provider may review a report (FIG. 10, column 11 lines 2-8) generated based on the measurement data. Support for claim 48 may be as follows: a physiological condition comprises diabetes, a measuring device comprises a blood glucose measurement device and measurement data comprises blood glucose data (all in column 6, lines 42-44). Furthermore, the Examiner admits that Fujimoto does not teach or suggest diabetes, blood glucose measurement device and blood glucose data.[26] Therefore, *prima facie* obviousness has not been established as Heinonen et al. are not a valid reference. As such, for the reasons described above, claims 48, 51 and 58 are independently patentable over the cited references and the rejections of claims 48, 51 and 58 should be reversed.

3. Claim 49 and 61 are patentable over Fujimoto in view of Heinonen et al.

Claims 49 and 61 depend, either directly or indirectly, from claims 48 and 59 respectively and, therefore, includes all the limitations of associated claims 48 and 59. Consequently, the arguments presented above in support of claims 48 and 59 are hereby incorporated by reference in support of claims 49 and 61. However, these claims, in particular claim 49, recite further limitations that the workstation comprises script entry programming (see, for example, element 56 in FIG. 2) configured to (i) receive input information from the health care provider and (ii) communicate the input information to the central processing unit (see, for example, element 202 in FIG. 11A) and (B) the central processing unit generates and assigns the script program to the individual based on the input information (see, for example, element 204 in FIG. 11A).

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[26] Final Office Action, page 5, paragraph (A).

In the rejection, the Examiner cites the text in column 8, lines 8-21 of Fujimoto, (reproduced above). However, nowhere in the cited text, or in any other section does Fujimoto appear to mention any among (i) a workstation, (ii) script entry programming in the workstation, (iii) input information received by the script entry programming in the workstation, (iv) communication of the input information from the workstation to the host computer 5 and (v) generation and assignment of script programs to individuals based on the input information received from the workstation. Furthermore, the Examiner does not provide any explanation of how the cited text of Fujimoto is being applied to the claims leaving the record in serious doubt as to why the proposed combination of Fujimoto and Heinonen et al. allegedly renders the claimed elements obvious. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the claim limitations. Thus, for the reasons described above, claims 49 and 61 are independently patentable over the cited references and the rejections should be reversed.

4. Claim 52 is patentable over Fujimoto in view of Heinonen et al.

Claim 52 depends directly from claim 48 and, therefore, includes all the limitations of claim 48. Consequently, the arguments presented above in support of claim 48 are hereby incorporated by reference in support of claim 52. However, claim 52 recites a further limitation that the remote processing apparatus comprises a script interpreter configured to execute the script program (for example, the firmware for microprocessor 76 in FIG. 4 includes a script interpreter).

In the rejection, the Examiner cites the text in column 8, lines 8-39 of Fujimoto, (reproduced above in the remarks for claim 47). However, nowhere in the cited text, or in any other section does Fujimoto appear to mention **a script interpreter** configured to execute a script program. Furthermore, the Examiner does not provide any explanation why one of ordinary skill in the art reading Fujimoto would conclude that Fujimoto teaches or suggests a script interpreter. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest that the remote processing apparatus comprises a script interpreter configured to execute the script program, as presently claimed. Thus, for the reasons described above, claim 52 is independently patentable over the cited references and the rejection should be reversed.

5. Claim 53 is patentable over Fujimoto in view of Heinonen et al.

Claim 53 depends directly from claim 48 and, therefore, includes all the limitations of claim 48. Consequently, the arguments presented above in support of claim 48 are hereby incorporated by reference in support of claim 53. However, claim 53 recites a further limitation that the generating and assigning of the script program comprises appending a unique patient identification code associated with the individual to the script program (see, for example, elements 106, 108 and 112 in FIG. 7).

In the rejection, the Examiner cites the text in column 8, lines 15-21 of Fujimoto, (reproduced above in the remarks for claim 47). However, nowhere in the cited text, or in any other section does Fujimoto appear to mention appending **a unique patient identification code** to a script

program. In contrast, column 7, lines 53-63 of Fujimoto appear to teach **assignment of identification codes to the data** collected by the measuring apparatus 8 so that the host computer 5 can identify the data for a particular patient once the data has been transferred to the host computer. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest that the generating and assigning of the script program comprises appending a unique patient identification code associated with the individual to the script program, as presently claimed. Thus, for the reasons described above, claim 53 is independently patentable over the cited references and the rejection should be reversed.

6. Claim 54 is patentable over Fujimoto in view of Heinonen et al.

Claim 54 depends directly from claim 48 and, therefore, includes all the limitations of claim 48. Consequently, the arguments presented above in support of claim 48 are hereby incorporated by reference in support of claim 54. However, claim 54 recites further limitations that (ii) the assignment of the script program comprises generating a pointer to the script program related to the individual (see, for example, element 208 in FIG. 11A) and (iii) the pointer is stored in a look-up table associated with a database (see, for example, elements 46 and 38 in FIG. 2).

In rejecting both the claimed pointer and the claimed look-up table, the Examiner cites the text in column 8, lines 15-39 of Fujimoto (reproduced above in the remarks for claim 47). Howwever, nowhere in the cited text, or in any other section does Fujimoto appear to mention either a pointer or a look-up table. Furthermore, the Examiner does not explain why one of ordinary skill in the art reading the cited text of Fujimoto would conclude that Fujimoto teaches or suggest a

pointer and a look-up table, as presently claimed. Therefore, the Examiner's conclusion that proposed combination of Fujimoto and Heinonen et al. render the claimed pointer and the claimed look-up table obvious is merely a conclusory statement that is not sustainable by any evidence or argument on record. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. As such, *prima facie* obviousness has not been established. Thus, for the reasons described above, claim 54 is independently patentable over the cited references and the rejection should be reversed.

7. Claims 78, 79, 81, 92, 93 and 95 are patentable over Fujimoto in view of Heinonen et al.

Claims 78, 79, 81, 92, 93 and 95 depend, directly or indirectly, from claims 77 and 91 and, therefore, include all the limitations of associated claims 77 and 91. Consequently, the arguments presented above in support of claims 77 and 91 are hereby incorporated by reference in support of claims 78, 79, 81, 92, 93 and 95. However, these claims, in particular claim 78, recite a further limitation that a physiological condition comprises diabetes, a measuring device comprises a blood glucose measurement device and measurement data comprises blood glucose data (see, for example, element 64 in FIG. 9).

Heinonen et al. are not valid prior art for the 35 U.S.C. §103(a) rejection. Heinonen et al. was first filed in the United States on May 21, 1998. In contrast, the present application claims priority to United States Patent No. 6,101,478 to Brown (hereafter Brown '478), which was filed November 21, 1997 and fully supports all of the pending claims. As such, the rejection of claims 48, 51 and 58 is improper and should be reversed.

Support for the claimed method of independent base claim 77 may be found in Brown '478 in at least FIGS. 11A-14B. Support for the rest of the claim is embedded in the claim text as follows: (A) storing a script assignment (element 208 in FIG. 11A) that associates the script program (element 40 in FIG. 2) with the individual, (B) connecting (element 210 in FIG. 11A) the central processing unit (server 18 in FIG. 1) with the remote processing apparatus (remote apparatus 26 in FIG. 1), (C) transferring the script program from the central processing unit to the remote processing apparatus (element 218 in FIG. 11A), (D) executing the script program in the remote processing apparatus to collect measurement data from the measuring device (elements 308-318 in FIG. 12A) and (E) transmitting the measurement data from the remote processing apparatus to the central processing unit upon execution of a transmit command of the script program (element 330 in FIG. 12B). Support for the language of claim 78 generally covers, a physiological condition comprises diabetes, a measuring device comprises a blood glucose measurement device and measurement data comprises blood glucose data (all in column 6, lines 42-44). Furthermore, the Examiner admits that Fujimoto does not teach or suggest diabetes, blood glucose measurement device and blood glucose data.[27] Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, *prima facie* obviousness has not been established as Heinonen et al. are not a valid reference. Thus, for the reasons described above, claims 78, 79, 81, 92, 93 and 95 are independently patentable over the cited references and the rejections of claims 78, 79, 81, 92, 93 and 95 should be reversed.

[27] Final Office Action, page 5, paragraph (A).

8. Claims 80, 87, 94 and 101 are patentable over Fujimoto in view of Heinonen et al.

Claims 80, 87, 94 and 101 depend, directly or indirectly, from claims 78, 84, 91 and 98 respectively and, therefore, includes all the limitations of associated claims 78, 84, 91 and 98. Consequently, the arguments presented above in support of claims 78, 84, 91 and 98 are hereby incorporated by reference in support of claims 80, 87, 94 and 101. However, these claims, in particular claim 80, recite a further limitation of transmitting a report to a workstation connected with the central processing unit (see, for example, element 58 in FIG. 2).

The Examiner cites the text in column 8, lines 8-39 of Fujimoto (reproduced above in the remarks for claim 47) in the rejection of the claimed workstation. In contrast, FIG. 1 and all of the text of Fujimoto only mentions that the host computer 5 is connected to a communication link 3, a printer 6, an external storage apparatus 7 and the medical apparatus 8. Nothing in Fujimoto hints at a workstation, let alone expressly discloses a workstation. Furthermore, the Examiner does not offer any explanation as to what element of Fujimoto is allegedly similar to the claimed workstation. Instead, the Examiner merely points to the cited text and asserts that something that is neither shown nor talked about is present. Such a conclusory assertion cannot be sustained without evidence or explanation of why it is correct. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest transmitting a report to a workstation connected with the central processing unit , as presently claimed. Thus, for the reasons described above, claims 80, 87, 94 and 101 are independently patentable over the cited references and the rejection should be reversed.

9. Claims 82 and 96 are patentable over Fujimoto in view of Heinonen et al.

Claims 82 and 96 depend, directly or indirectly, from claims 78 and 92 respectively and, therefore, includes all the limitations of associated claims 78 and 92. Consequently, the arguments presented above in support of claims 78 and 92 are hereby incorporated by reference in support of claims 82 and 96. However, these claims, in particular claim 82, recites a further limitation of collecting the measurement data at the remote processing apparatus from the measuring device according to a collect command of the script program (see, for example, the COLLECT command in Table 1).

The Examiner cites the text in column 8, lines 8-39 of Fujimoto (reproduced above in the remarks for claim 47) in the rejection of the claimed workstation. In contrast, nowhere in the cited text does Fujimoto appear to mention collecting measurement data at the medical apparatus 8 from a measuring device according to a collect command contained of the script program. Fujimoto does show an armband 10 connected to the medical apparatus 8 in FIG. 4. However, FIG. 5 of Fujimoto shows that measurements taken from the armband 10 are initiated by the patient by pressing a button (OPERATION BUTTON (Yes) ON). A similar manual procedure is mentioned in column 5, lines 14-61 of Fujimoto using EKG electrodes 18 per the flow diagram of FIG. 6. The rest of Fujimoto appears to be silent regarding any type of collect command within a script program previously generated in the host computer 5 and transferred to the medical apparatus 8. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest collecting the measurement data at the remote

processing apparatus from the measuring device according to a collect command of the script program, as presently claimed. Thus, for the reasons described above, claim 82 and 96 are independently patentable over the cited references and the rejections should be reversed.

10. Claims 83, 89, 97 and 103 are patentable over Fujimoto in view of Heinonen et al.

Claims 83, 89, 97 and 103 depend, directly or indirectly, from claim 82, 84, 96 and 99 respectively and, therefore, includes all the limitations of claims 82, 84, 96 and 99. Consequently, the arguments presented above in support of claims 82, 84, 96 and 99 are hereby incorporated by reference in support of claims 83, 89, 97 and 103. However, these claims, in particular claim 83, recites a further limitation of generating a message prompting the individual to connect the blood glucose measurement device to the remote processing apparatus (see, for example, the element 64 in FIG. 9).

The Examiner cites (i) column 3, lines 7-29 and (ii) column 7, line 67 through column 8, line 8 in the rejection:

> Referring now to FIG. 3, the medical terminal equipment 1 is removably mounted on the user side communication apparatus 2, and if an operation lever 20 mounted on the user side communication apparatus 2 is tilted down and the medical terminal equipment 1 is pulled forwardly, then a connecting terminal 21 is removed from a connector 22 so that the medical terminal equipment 1 can thereafter be carried freely. It is to be noted that, in order to connect the thus removed medical terminal equipment 1 to the user side communication apparatus 2, the connecting terminal 21 is put to the connector 22 while the operation lever 20 is in the tilted down condition, and then the operation lever 20 is tilted up, thereby completing the connection of the medical terminal equipment 1 to the user side communication apparatus 2. Naturally, the present invention is not limited to the present embodiment with regard to the construction described just above. A battery power source is provided in the medical terminal equipment 1 as hereinafter described so that a

> measurement of the blood pressure and so forth and inputting of other data and so forth can be performed at a location remote from the user side communication apparatus 2. (Fujimoto, column 3, lines 7-29)
>
> The transmission of the data may be performed by accessing of the user side to the medical institution side or may be performed by accessing of the medical institution side so that the medical institution receives data stored in the user side communication apparatus 2. The number of times of measurement and inputting of various data within a day can be selected arbitrarily in accordance with an instruction of the medical institution. (Fujimoto, column 7, line 67 through column 8, line 8)

The first paragraph above explains how a medical terminal equipment 1 is removably mounted on a user side communication apparatus 2. Nothing is said about generating a message prompting the patient to connect a (blood glucose) measurement device to the medical apparatus 8. The second paragraph above mentions transmitting data from a user side to a medical institution side. Again, nothing is said about generating a message prompting the patient to connect a measurement device to the medical apparatus 8. The rest of Fujimoto appears to be silent regarding a message prompting a patient to connect any type of measurement device to the medical apparatus 8. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. As such, the Examiner has not meet the burden to establish *prima facie* obviousness for lack of evidence that the references teach or suggest all of the claim limitations. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest generating a message prompting the individual to connect the blood glucose measurement device to the remote processing apparatus, as presently claimed. Thus, for the reasons described above, claims 83, 89, 97 and 103 are independently patentable over the cited references and the rejections should be reversed.

11. Claims 85, 86, 98, 99, 100 and 102 are patentable over Fujimoto in view of Heinonen et al.

Claims 85, 86, 88, 99, 100 and 102 depend, directly or indirectly, from claims 84 and 98 and, therefore, include all the limitations of associated claims 84 and 98. Consequently, the arguments presented above in support of claims 84 and 98 are hereby incorporated by reference in support of claims 85, 86, 88, 99, 100 and 102. However, these claims, in particular claim 85, recite a further limitation that a physiological condition comprises diabetes, a measuring device comprises a blood glucose measurement device and measurement data comprises blood glucose data.(see, for example, element 64 in FIG. 9).

Heinonen et al. are not valid prior art for the 35 U.S.C. §103(a) rejection. Heinonen et al. was first filed in the United States on May 21, 1998. In contrast, the present application claims priority to United States Patent No. 6,101,478 to Brown (hereafter Brown '478), which was filed November 21, 1997 and fully supports all of the pending claims. As such, the rejection of claims 48, 51 and 58 is improper and should be reversed.

Support for the claimed method of independent base claim 84 may be found in Brown '478 in at least FIGS. 11A-14B. Support for the rest of the claim is embedded in the claim text as follows: (A) transmitting the script program through a communication link from the central processing unit to the remote programming apparatus (element 218 in FIG. 11A), (B) disconnecting the communication link after the scrip program has been transmitted (END SCRIPT PROGRAM in FIG. 12B), (C) collecting measurement data in the remote processing apparatus as received from the measuring device according to a collect command of the script program (element 318 in FIG.

12A, (D) connecting the communication link between the remote processing apparatus and the central processing unit after the measurement data has been collected (element 328 in FIG. 12B) and (E) transmitting the measurement data from the remote processing apparatus to the central processing unit through the communications link (element 330 in FIG. 12B). Support for claim 85 may be as follows: a physiological condition comprises diabetes, a measuring device comprises a blood glucose measurement device and measurement data comprises blood glucose data (column 6, lines 42-44). Furthermore, the Examiner admits that Fujimoto does not teach or suggest diabetes, blood glucose measurement device and blood glucose data.[28] Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, *prima facie* obviousness has not been established as Heinonen et al. are not a valid reference. As such, for the reasons described above, claims 85, 86, 88, 99, 100 and 102 are independently patentable over the cited references and the rejections of claims 85, 86, 88, 99, 100 and 102 should be reversed.

12. Claims 90 and 104 are patentable over Fujimoto in view of Heinonen et al.

Claims 90 and 104 depend, directly of indirectly, from claims 85 and 99 respectively and, therefore, includes all the limitations of associated claims 85 and 99. Consequently, the arguments presented above in support of claims 85 and 99 are hereby incorporated by reference in support of claims 90 and 104. However, these claims, in particular, claim 90 recites a further limitation of transmitting of the blood glucose data from the remote processing apparatus to the

[28] Final Office Action, page 5, paragraph (A).

central processing unit is according to a transmit command of the script program (see, for example, the element 330 in FIG. 12C).

In the rejection, the Examiner cites the text in column 8, lines 31-39 of Fujimoto (reproduced above in the remarks for claim 47). However, nowhere in the cited text, or in any other section does Fujimoto appear to mention a transmit command in a script program causing measurement data to be sent from the medical apparatus 8 to the host computer 5. Fujimoto discloses the transmission of data from the medical apparatus 8 to the host computer 5 in column 7, line 67 through column 8, line 7, but says noting about what initiates the transmission. Speculation about the present of a command allegedly being executed in the medical apparatus 8 does not meet the burden for *prima facie* obviousness. Therefore, Fujimoto and Heinonen et al., alone or in combination, do not teach or suggest transmitting of the blood glucose data from the remote processing apparatus to the central processing unit is according to a transmit command of the script program, as presently claimed. Thus, for the reasons described above, claim 90 is independently patentable over the cited references and the rejection should be reversed.

13. Claim 106 is patentable over Fujimoto in view of Heinonen et al.

Claim 106 depends, directly of indirectly, from claims 98 and, therefore, includes all the limitations of claim 98. Consequently, the arguments presented above in support of claim 98 are hereby incorporated by reference in support of claim 106. However, claim 106 recites a further limitation that the remote processing apparatus is configured to intermittently establish a

communication link with the central processing unit and (ii) disconnect the communication link after a period of time after each establishment (see, for example, elements 328 and 334 in FIG. 12C).

The Examiner cites column 8, lines 8-39 (reproduced above in the remarks for claim 47) of Fujimoto in the rejection. However, nowhere in the cited text, or in any other section does Fujimoto appear to mention the medical apparatus 8 both (i) intermittently establishing a communication link on the telecommunication line 4 and (ii) disconnecting the communication link after a period of time after each establishment. The above cited text merely states that data can be send from a user side (medical apparatus 8) to a medical institution side (host computer 5). In contrast to the claim, Fujimoto is basically silent regarding when communication links are established on the telecommunication line 4 and when, if ever, those communication links are disconnected. The Examiner does not provide any arguments, other than "this feature is taught in Fujimoto"[29], why one of ordinary skill in the art reading the above text would see an intermittent connection and disconnections a period of time after each establishment. Heinonen et al. do not appear to cure the deficiencies of Fujimoto. Therefore, Fujimoto does not disclose or suggest that the remote processing apparatus is configured to intermittently establish a communication link with the central processing unit and (ii) disconnect the communication link after a period of time after each establishment, as presently claimed.

The Examiner further asserts that intermitted connections are inherent to Fujimoto because "normally a telephone is not used to solely and exclusively communication with only one

[29] Final Office Action, page 5, paragraph (H).

other telephone link."[30] However, inherency requires certainty of results, not mere possibility.[31] In the instant case, the Examiner basically admits that intermittent connections are not a certainty, rather such behavior is merely "normal". Furthermore, Fujimoto teaches that the telecommunication link 4 may also be implemented as a cable television system. Common cable modems use within cable television systems establish a communication link once and then maintain that link. Therefore, inherency has not been established due to the lack of evidence that a communication link across the telecommunication line 4 of Fujimoto necessarily established intermittently, as presently claimed. The Examiner does not make an inherency argument for the claimed period of time after each establishment. Thus, for the reasons described above, claim 106 is independently patentable over the cited references and the rejection should be reversed.

C. CONCLUSION

None of the cited references suggest (i) programming code, (ii) further programming code, (iii) a workstation and/or (iv) collect commands as recited in the independent claims. Hence, the Examiner has clearly erred with respect to the patentability of the claimed invention. It is respectfully requested that the Board overturn the Examiner's rejection of all pending claims, and hold that the claims are not rendered obvious by the cited reference. However, should the Board find the arguments herein in support of independent claims 47, 59, 77, 84. 91 and /or 98 unpersuasive,

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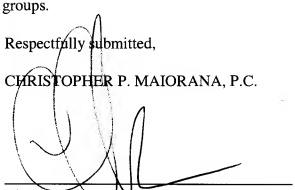
[30] Final Office Action, page 5, paragraph (H).

[31] See, e.g., *Ethyl Molded Products Co. v. Betts Package, Inc.*, 9 U.S.P.Q. 2d 1001 (E.D.Ky 1988). See also, In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (C.C.P.A. 1981).

the Board is respectfully requested to carefully consider the arguments set forth above in support of each of the independently patentable groups.

Respectfully submitted,

CHRISTOPHER P. MAIORANA, P.C.



Christopher P. Maiorana
Registration No. 42,829

Dated: February 11, 2008

c/o Sandeep Jaggi
Health Hero Network

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VIII. CLAIM APPENDIX

The claims of the present application which are involved in this appeal are as follows:

47. A system for monitoring a physiological condition of an individual using a computer network, comprising:

a central processing unit (A) having access to one or more databases and (B) configured to perform operations according to monitoring application programming, the central processing unit comprising (i) programming code configured to generate a script program that collects measurement data relating to the physiological condition of the individual and (ii) further programming code configured to assign the script program to the individual;

a remote processing apparatus (i) connectable to a measuring device to receive the measurement data according to a collect command contained in the script program and (ii) connectable to the central processing unit to transmit the measurement data to the central processing unit according to a transmit command contained in the script program; and

a workstation connectable to the central processing unit to receive the measurement data so that a health care provider may review a report generated based on the measurement data.

48. The system of claim 47, wherein the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device and the measurement data comprises blood glucose data.

49. The system of claim 48, wherein (A) the workstation comprises script entry programming configured to (i) receive input information from the health care provider and (ii) communicate the input information to the central processing unit and (B) the central processing unit generates and assigns the script program to the individual based on the input information.

51. The system of claim 48, wherein the monitoring application programming is configured to instruct the central processing unit to generate the report based on the blood glucose data.

52. The system of claim 48, wherein the remote processing apparatus comprises a script interpreter configured to execute the script program.

53. The system of claim 48, wherein the generating and assigning of the script program comprises appending a unique patient identification code associated with the individual to the script program.

54. The system of claim 48, wherein (i) the monitoring application programming is configured to instruct the central processing unit to store the script program in a database, (ii) the assignment of the script program comprises generating a pointer to the script program related to the individual and (iii) the pointer is stored in a look-up table associated with the database.

55. The system of claim 47, wherein the script program comprises one or more queries and one or more response choices for the individual.

56. The system of claim 55, wherein the remote programming apparatus comprises a human interface configured to receive one or more responses from the individual to the queries to be communicated to the central processing unit.

57. The system of claim 48, wherein the remote programming apparatus is sufficiently compact to be hand-held and carried by the individual.

58. The system of claim 48, wherein the report comprises a graph illustrating several measurements of the blood glucose data.

59. A system for monitoring a physiological condition of an individual using a computer network, comprising:

a central processing unit (A) having access to one or more databases and (B) configured to perform operations according to monitoring application programming, the central processing unit comprising (i) programming code configured to generate a script program that collects blood glucose data relating to the physiological condition of the individual and (ii) further programming code configured to assign the script program to the individual;

a remote processing apparatus (i) connectable to a measuring device and to receive

the blood glucose data according to a collect command in the script program and (ii) connectable to the central processing unit; and

a workstation connectable to the central processing unit to receive the blood glucose data so that a health care provider may review a report generated based on the blood glucose data.

60. The system of claim 59, wherein the physiological condition comprises diabetes and the measuring device comprises a blood glucose measurement device.

61. The system of claim 60, wherein (i) the workstation comprises script entry programming configured to enable the health care provider to enter information that is communicated to the central processing unit and (ii) the central processing unit generates and assigns the script program to the individual based on the information.

62. The system of claim 60, wherein the monitoring application programming is further configured to instruct the central processing unit to generate the report based on the blood glucose data.

77. A method of monitoring a physiological condition of an individual using a computer network, the computer network comprising a central processing unit and a remote processing apparatus, the central processing unit having a script program stored therein and the remote processing apparatus communicating with a measuring device that measures at least one

parameter indicative of the physiological condition of the individual, the method comprising the steps of:

(A) storing a script assignment that associates the script program with the individual;

(B) connecting the central processing unit with the remote processing apparatus;

(C) transferring the script program from the central processing unit to the remote processing apparatus;

(D) executing the script program in the remote processing apparatus to collect measurement data from the measuring device; and

(E) transmitting the measurement data from the remote processing apparatus to the central processing unit upon execution of a transmit command of the script program.

78. The method of claim 77, wherein the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device and the measurement data comprises blood glucose data.

79. The method of claim 78, further comprising the step of:

generating a report in the central processing unit based upon the blood glucose data.

80. The method of claim 79, further comprising the step of:

transmitting the report to a workstation connected with the central processing unit.

81. The method of claim 80, wherein the report comprises a graph illustrating several measurements of the blood glucose data.

82. The method of claim 78, further comprising the step of:

collecting the measurement data at the remote processing apparatus from the measuring device according to a collect command of the script program.

83. The method of claim 82, further comprising the step of:

generating a message prompting the individual to connect the blood glucose measurement device to the remote processing apparatus.

84. A method of monitoring a physiological condition of an individual using a computer network, the computer network comprising a central processing unit and a remote processing apparatus, the central processing unit having a script program stored therein and the remote processing apparatus communicating with a measuring device that measures at least one parameter indicative of the physiological condition of the individual, the method comprising the steps of:

(A) transmitting the script program through a communication link from the central processing unit to the remote programming apparatus;

(B) disconnecting the communication link after the scrip program has been transmitted;

(C) collecting measurement data in the remote processing apparatus as received from the measuring device according to a collect command of the script program;

(D) connecting the communication link between the remote processing apparatus and the central processing unit after the measurement data has been collected; and

(E) transmitting the measurement data from the remote processing apparatus to the central processing unit through the communications link.

85. The method of claim 84, wherein the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device and the measurement data comprises blood glucose data.

86. The method of claim 85, further further comprising the step of:

generating a report in the central processing unit based upon the blood glucose data.

87. The method of claim 86, further comprising the step of:

transmitting the report to a workstation connected with the central processing unit.

88. The method of claim 87, wherein the report comprises a graph illustrating several measurements of the blood glucose data.

89. The method of claim 85, further comprising the step of:

generating a message prompting the individual to connect the blood glucose measurement device to the remote processing apparatus.

90. The method of claim 85, wherein the transmitting of the blood glucose data from the remote processing apparatus to the central processing unit is according to a transmit command of the script program.

91. One or more processor readable storage devices having processor readable code embodied thereon, the processor readable code being configured to program one or more processors to perform a method of monitoring a physiological condition of an individual using a computer network, the computer network comprising a central processing unit and a remote processing apparatus, the central processing unit having access to a script program stored therein and the remote processing apparatus communicating with a measuring device that measures at least one parameter indicative of the physiological condition of the individual, the method comprising the steps of:

(A) storing a script assignment that associates the script program with the individual;

(B) connecting the central processing unit with the remote apparatus;

(C) transmitting the script program from the central processing unit to the remote processing apparatus;

(D) executing the script program in the remote processing apparatus to collect measurement data from the measuring device; and

(E) transmitting the measurement data from the remote processing apparatus to the central processing unit upon execution of a transmit command of the script program.

92. The processor readable storage devices of claim 91, wherein the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device and the measurement data comprises blood glucose data.

93. The processor readable storage devices of claim 92, the method further comprising the step of:

generating a report in the central processing unit based upon the blood glucose data.

94. The processor readable storage devices of claim 93, the method further comprising the step of:

transmitting the report to a workstation connected with the central processing unit.

95. The processor readable storage devices of claim 94, wherein the report comprises a graph illustrating several measurements of the blood glucose data.

96. The processor readable storage devices of claim 92, the method further comprising the step of:

collecting the blood glucose data in the remote processing apparatus as received from the measuring device according to a collect command of the script program.

97. The processor readable storage devices of claim 96, the method further comprising the step of:

generating a message prompting the individual to connect the blood glucose measurement device to the remote processing apparatus.

98. One or more processor readable storage devices having processor readable code embodied thereon, the processor readable code configured to program one or more processors to perform a method of monitoring a physiological condition of an individual using a computer network, the computer network comprising a central processing unit and a remote processing apparatus, the central processing unit having access to a script program stored in the processor readable storage devices and the remote processing apparatus communicating with a measuring device that measures at least one parameter indicative of the physiological condition of the individual, the method comprising the steps of:

(A) transmitting the script program through a communication link from the central processing unit to the remote processing apparatus;

(B) disconnecting the communication link after the scrip program has been

transmitted;

(C) collecting measurement data at the remote processing apparatus from the measuring device according to a collect command of the script program;

(D) connecting the communication link between the remote processing apparatus and the central processing unit after the measurement data has been collected; and

(E) transmitting the measurement data from the remote processing apparatus to the central processing unit through the communication link.

99. The processor readable storage devices of claim 98, wherein the physiological condition comprises diabetes, the measuring device comprises a blood glucose measurement device and the measuring device measurement data comprises blood glucose data.

100. The processor readable storage devices of claim 99, wherein the method further comprises the step of:

generating a report in the central processing unit based upon the blood glucose data.

101. The processor readable storage devices of claim 100, wherein the method further comprises the step of:

transmitting the report to a workstation connected with the central processing unit.

102. The processor readable storage devices of claim 101, wherein the report comprises a graph illustrating several measurements of the blood glucose data.

103. The one or more processor readable storage devices of claim 99, wherein the method further comprises the step of:

generating a message prompting the individual to connect the measuring device to the remote processing apparatus.

104. The processor readable storage devices of claim 99, wherein the transmitting of the measurement data from the remote processing apparatus to the central processing unit is according to a transmit command of the script program.

105. The system of claim 47, wherein the remote processing apparatus is further configured to intermittently establish a communication link with the central processing unit and (ii) disconnect the communication link after a period of time after each establishment.

106. The system of claim 59, wherein the remote processing apparatus is further configured to intermittently establish a communication link with the central processing unit and (ii) disconnect the communication link after a period of time after each establishment.

107. The method of claim 77, further comprising the steps of:

establishing a communication link between the central processing unit and the remote processing apparatus intermittently; and

disconnecting the communication link after a period of time after each establishment.

108. The processor readable storage devices of claim 91, wherein the method further comprises the steps of:

establishing a communication link between the central processing unit and the remote processing apparatus intermittently; and

disconnecting the communication link after a period of time after each establishment.

109. The method of claim 84, wherein (i) the communication link is established intermittently and (ii) disconnected a period of time after each establishment.

110. The processor readable storage devices of claim 98, wherein (i) the communication link is established intermittently and (ii) disconnected a period of time after each establishment.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.